



**Missouri Department of Natural Resources' Recommendation on  
Holcim (US) Inc./Energis, LLC, Variance Petition to  
the Missouri Hazardous Waste Management Commission  
PER-06-1V**

**Introduction**

Holcim (US) Inc./Energis, LLC, is located on Highway 79 North, two miles north of Clarksville, Missouri. Holcim (US) Inc./Energis, LLC, has requested a variance from 10 CSR 25-7.264 (3)(B)2. The regulation states, "the owner/operator shall unload hazardous waste from an incoming railcar within 72 hours of receipt of the shipment." The Missouri Department of Natural Resources (department) received the variance petition on June 14, 2006. The department reviewed the petition, as required by 10 CSR 25-8.124(5)(B), and consider the request to be non-substantive.

If the commission grants the variance petition, Holcim (US) Inc./Energis, LLC, would be allowed up to ten days to unload hazardous waste from railcars instead of the current three days under normal working conditions.

**Background**

Holcim (US) Inc./Energis, LLC, operates a single, wet process cement kiln that produces approximately 4,000 tons of clinker per day, the primary ingredient in Portland cement. Pulverized coal is the primary fuel used for the cement kiln; however, Holcim (US) Inc./Energis, LLC, also uses liquid and solid hazardous waste-derived fuel as supplementary fuel in the kiln. Holcim (US) Inc./Energis, LLC, handles approximately 124 railcars a year.

Since Holcim (US) Inc./Energis, LLC, does not control the scheduling and routing of these incoming railcars, it is not uncommon that cars aggregate off-site to meet the 72-hour offloading requirement. This means that the railcars must be "staged" in a rail yard or siding where there are no provisions for safety and spill response. Under the current hazardous waste permit, Holcim (US) Inc./Energis, LLC, regularly checks for leaks, spills, or other problems or hazards associated with staging the railcars at the facility and applies/follows the contingency plan in the case of emergency. In addition, under the corrective action section of the permit Holcim (US) Inc./Energis, LLC, is required to identify any newly discovered releases (such as a railcar leak/release) on its property and conduct an investigation.

The department has determined this variance petition to be "non-substantive" based on state statutory and regulatory criteria. The commission may grant a variance pursuant to the state law (Section 260.405, RSMo), if certain conditions are met. The department has reviewed each of these conditions and compared them to the facts of this case. The statute that authorizes a variance provides in pertinent part:

1. *"...if...compliance...will result in an arbitrary and unreasonable taking of property or practical closing and elimination of any lawful business, occupation or activity, in either*

***case without sufficient corresponding benefit or advantage to the people....”***  
***(Section 260.405.1, RSMo)***

The department staff believes, based on their technical analysis, that not granting this variance would impose a substantial cost on Holcim (US) Inc./Energis, LLC, without producing a corresponding benefit to the people. Holcim (US) Inc./Energis, LLC, has to pay demurrage charges that could significantly reduce or possibly eliminate the delivery of hazardous waste shipments via rail to the facility.

2. ***“Except {if} the effect of a variance will permit the continuance of a condition which unreasonably poses a present or potential threat to the health of humans or other living organisms.” (Section 260.405.1, RSMo)***

The department staff does not believe that the effect of this variance will permit the continuation of a condition that unreasonably poses a present or potential threat to human health or the environment. Because any staged railcars will be in view of facility security and the facility has personnel training and corrective measure requirements built into its railcar management plan and hazardous waste permit to handle emergency responses, these activities will be closely monitored.

3. ***“any variance so granted shall not be so construed as to relieve the person who receives the variance from any liability imposed by any other law for the commission or maintenance of a nuisance or damage to the property or rights of any person.”***  
***(Section 260.405.1, RSMo)***

Holcim owns the rail spur. Under the corrective action portion of their permit, they must remediate any environmental releases. Therefore, department staff believe this variance will not be construed as to relieve Holcim (US) Inc./Energis, LLC, from any liability imposed by any other law for the commission or maintenance of a nuisance or damage to the property or rights of any person.

4. ***“In no event shall the variance be granted for a period of time greater than one year and shall not be renewable unless circumstances can be shown which preclude compliance within the one-year period of the variance and the renewal will not result in an unreasonable risk to the health of humans or the environment.”***  
***(Section 260.405.3, RSMo)***

Since the department is considering making changes to 10 CSR 25-7.264 (3)(B)2, and this process generally will take more than one year because of the rulemaking process, the department believes that Holcim (US) Inc./Energis, LLC, may want the commission to grant additional one-year variances until such time as the regulation is modified.

All public notification procedures will be completed. The department is submitting this recommendation to the commission within 60 days of receipt of the variance petition as required by 10 CSR 25-8.124(5)(C)2.

**Recommendation**

Pursuant to Section 260.405, and given the comparatively positive aspects of on-site railcar staging such as added security, inspections and documented emergency response procedures, the department recommends that the commission grant Holcim (US) Inc./Energis, LLC, a variance petition for a period of one year under the following conditions:

1. Holcim (US) Inc./Energis, LLC, is allowed ten days from the point of railcar receipt to offload hazardous waste into its permitted railcar management area. The point of railcar receipt at the Holcim (US) Inc./Energis, LLC, facility is the point at which the railcar enters Holcim's property boundary.
2. Holcim (US) Inc./Energis, LLC, shall conduct all railcar management activities in accordance with the Management Plan for Rail Tank Cars submitted with the variance request. This plan specifies requirements for activities such as:
  - Railcar tracking system and record keeping;
  - Inspection schedule and checklists;
  - Spill response plan counter measures and timeframes for corrective action activities;
  - Spill equipment inventory and contingency plan provisions;
  - Storm water controls, equipment, and spill procedures for the on-site railway siding area;
  - Railcar movement procedures in the staging and permitted unloading area;
  - Acknowledgement and compliance with corrective action conditions of Holcim (US) Inc./Energis, LLC's, hazardous waste operating permit for newly identified releases and notification procedures; and
  - Written agreements with other destination facilities that would accept full railcars in the event Holcim (US) Inc./Energis, LLC, was unable to process in a sufficiently timely manner or ceased processing altogether.